

Maine Rx gets Supreme Court go-ahead

After a 21/2-year wait, the controversial Maine Rx prescription discount program will finally move forward. The U.S. Supreme Court on Monday lifted a federal court injunction that has held the innovative program in limbo pending the outcome of a lawsuit filed by the pharmaceutical industry. Under Maine Rx, the state will negotiate lower drug prices with manufacturers, resulting in consumers paying up to 40 percent less for their prescriptions. The program targets lower medication costs for all residents lacking drug insurance, regardless of income.

Maine officials responded enthusiastically to the ruling, claiming victory for states' efforts to control the cost of drugs.

"This ruling underscores the fact that states can lead the way when it comes to health care reform and innovation," Gov. John Baldacci said at an afternoon press conference. "Maine is being recognized throughout the nation as a leader in the effort to ensure access to more affordable prescription medication."

The federal government currently gets about a 40 percent discount on medications for veterans by negotiating bulk purchases. Maine Rx is aiming to achieve the same discounts.

Drug companies agreeing to the discount would have their products included on the state's list of preferred medications, allowing them to be prescribed to the hundreds of thousands of Medicaid participants and other public consumers. Medicaid is a joint state-federal program that finances health care for the poor and disabled.

The products of companies that refuse to participate would have to go through a "prior authorization" process that requires physicians and patients to try alternate medications first.

If prices didn't drop in three years, the state could impose price controls.

Attorney General Stephen Rowe said that while possible challenges remain to Maine Rx, Monday's ruling has national significance. "This shows that states can enact a law using Medicaid prior authorization to leverage discounts for a non-Medicaid population," he said.

Passed in the spring of 2000 and scheduled to take effect in January 2001, Maine Rx was challenged by the pharmaceutical industry before it could be implemented. The Pharmaceutical Research and Manufacturers of America, or PhRMA, contends that the plan puts Medicaid recipients at a disadvantage by limiting the list of approved medications, and that as state statute, it is superceded by existing federal Medicaid law. PhRMA also argues that allowing a state to pressure manufacturers into lower prices violates interstate commerce laws.

The battle probably is not over, as the 6-3 Supreme Court ruling Monday made clear.

Justices stopped short of any broad endorsement of the merits of Maine's plan. The ruling

said only that drug makers did not adequately show why the plan should be blocked.

"By no means will our answer to that question finally determine the validity of Maine's Rx program," Justice John Paul Stevens wrote for the court.

Future court challenges could again stop the program, or the Bush administration could move to block or modify it.

Some justices had suggested in January, when the case was argued, that the dispute be resolved by a lower court or by the federal Department of Health and Human Services, which oversees Medicaid.

The Supreme Court left the door open for either step.

Marjorie Powell, spokeswoman for the drug industry group that sued over the Maine program, said it is too soon to tell what effect the court ruling will have.

"There are better answers than the one Maine offers," Powell said. PhRMA claims Maine's approach would prevent some patients from getting the specific drugs they want if the state determined those drugs cost too much.

Monday's ruling allows Maine Rx to move forward while the original lawsuit filed in federal court in Portland awaits resolution.

Peter Walsh, Maine's acting commissioner of human services, said a committee will examine and update the language of Maine Rx to ensure it lines up with current state programs and budgetary concerns. Walsh said any changes would be presented as emergency legislation within ten days. After that, he said, negotiations with drug manufacturers will commence. He couldn't say how long it might take for the program to go into effect.

Maine Rx's principal architect, former Maine Democratic Sen. Chellie Pingree of North Haven, said Monday the court decision is "a great victory."

"It shows that a little state like Maine can take on a giant like the pharmaceuticals companies and win," she said. Pingree now serves as the director of the national citizen advocacy organization Common Cause.

Congressional response to the court decision was also enthusiastic. Sen. Susan Collins issued a statement in support of Maine Rx. "States are important laboratories for reform, and we need to let them carry out this innovative attempt to help Mainers cope with the high cost of prescription drugs," she said.

Sen. Olympia Snowe said, "Maine has been a pioneer in creating this innovative law, fulfilling the vision of states as the 'laboratories of democracy.'" Snowe predicted Maine Rx would provide valuable information on providing relief from the high cost of prescription drugs.

U.S. Reps. Tom Allen and Mike Michaud issued a joint statement calling the ruling a "stinging defeat for the powerful pharmaceutical companies" and "a rebuke to the Bush Administration," which sided with the industry against Maine Rx.

Contacted by phone, Michaud said he was encouraged by the decision. As many as 28 other states have drafted similar legislation, Michaud said, and have been awaiting the Supreme Court decision before moving forward.

Additionally, Michaud said, the decision lends weight to the growing interest in reining in prescription prices at the federal level. The 2nd District Democrat recently submitted "America Rx," a federal prescription drug bill modeled after Maine's.

America Rx ties manufacturers' willingness to negotiate prices to their federal tax deductions for advertising and marketing, instead of to their participation in Medicaid.

"Hopefully, members of Congress will think that rather than having a bunch of different laws at the state level, it would be better to have government regulation at the national level, like Canada and every other industrialized country," Michaud said.

In the Supreme Court ruling, only Justices David Souter and Ruth Bader Ginsburg fully agreed with Stevens' analysis of the potential benefits of the Maine program, but Justices Antonin Scalia, Clarence Thomas and Stephen Breyer agreed that the program should have a chance to take effect.

Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor and Anthony Kennedy dissented on that point. They would have left in place a lower court order blocking the program.

A federal appeals court disagreed, but kept the program on hold until the Supreme Court could rule.

Major drug stocks fell by as much as 5.3 percent after the court announced its decision.

The case is Pharmaceutical Research and Manufacturers of America v. Concannon, 01-188.

The Associated Press contributed to this report.